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BEFORE THE

Federal Communications Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

WASHINGTON, D.C. 20554

In the Matter of)
)
Replacement of Part 90 by)
Part 88 to Revise the Private)
Land Mobile Radio Services)
and Modify the Policies)
Governing Them)
)
and)
)
Examination of Exclusivity)
and Frequency Assignment)
Policies of the Private)
Land Mobile Radio Services)

PR Docket No. 92-235

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**REQUEST FOR STAY OF THE RADIO SERVICE CONSOLIDATION
PROVISIONS OF PR DOCKET NO. 92-235
FOR PUBLIC SAFETY RADIO SERVICES**

The International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs ("IAFC"), by their attorneys and pursuant to Section 1.43 of the Commission's Rules, 47 C.F.R. § 1.43, hereby respectfully request that the Federal Communications Commission STAY the service consolidation provisions contained in the spectrum refarming proceeding,^{1/} as those provisions pertain to the Public Safety radio services.^{2/} IAFC/IMSA request a stay of the Order governing service consolidation until such time as the Commission has received and considered the recommendations of the Public Safety

^{1/} Report and Order ("Order") and Further Notice of Proposed Rulemaking ("Further Notice"), 60 Fed. Reg. 37152 (July 19, 1995).

^{2/} Order at ¶¶ 42-55.

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Wireless Advisory Committee ("PSWAC") and their impact upon the Public Safety Services.

The Request for Stay will allow the Commission sufficient time to consider the findings and recommendations of PSWAC, which is co-sponsored and established by the FCC and the National Telecommunications and Information Administration ("NTIA") to advise those agencies on operational, technical and spectrum requirements of federal, state and local Public Safety entities through 2010. This Advisory Committee's actions may directly impact the consolidation of the six Public Safety radio services. As to Public Safety, PSWAC's function overlaps the goal of the Commission as stated in its Report and Order: "to meet a long term goal of increasing the efficiency of the PLMR frequency bands." 60 Fed. Reg. at 37152. Implementing the consolidation provisions of the Order as to Public Safety prior to the submission of PSWAC's report and recommendations is premature and possibly preemptive of, or inconsistent with, the function of PSWAC.

I. Statement of Interest

IMSA is a non-profit organization dedicated to the development and use of electrical signaling and communications systems in the furtherance of public safety. IMSA members include representatives of federal, state, county, city, township and borough governmental bodies, and representatives of governmental bodies from foreign nations. Organized in 1896, IMSA is the oldest organization in the world

dedicated to the activities pertaining to electrical engineering, including the Public Safety use of radio technology.

IAFC is a voluntary, professional membership society. Its approximately 10,000 members comprised of senior Fire Service officials are dedicated to the protection of life and property throughout the United States and abroad. IAFC is the major national professional association representing the interests of senior management in the Fire Service. The Fire Service throughout the United States is the principal provider of first responder emergency medical services.

IAFC and IMSA are recognized as the frequency coordinating committee for the Fire Radio Service and the Emergency Medical Radio Service ("EMRS") and, in conjunction with National Association of Business and Educational Radio, Inc. (NABER), constitute the recognized coordinating committee for the Special Emergency Radio Service ("SERS"). Petitioners thus have a substantial interest in the refarming proceeding.

II. Background

PSWAC's Charter establishes that it will advise the FCC and NTIA on the entire structure and use of Public Safety spectrum.^{3/} PSWAC must submit a report to the FCC and NTIA within 12 months of the first formal meeting.^{4/}

PSWAC's report will provide the FCC and NTIA with a detailed analysis of ways to improve spectrum utilization and efficiency; this is also the purpose of the Order. An additional function stated in the Charter is that PSWAC will facilitate FCC rulemaking(s) regarding the Public Safety spectrum, as well as advance the development and implementation of plans at NTIA regarding Federal public safety policy.

All aspects of Public Safety communications use are open for consideration by PSWAC. Thus, PSWAC well may examine the organization of the allocation of Public Safety spectrum, as well as consolidation or reorganization of the present radio services, since the service organization and sub-allocation of spectrum is intertwined with spectrum utilization and efficiency issues. Interoperability is a concern in both the Order and in PSWAC's Charter. As such, IMSA/IAFC submit that implementing the Public Safety radio service consolidation

^{3/} Public Safety Wireless Advisory Committee Charter, filed June 26, 1995.

^{4/} Id.

provisions of the Order is premature and may be counterproductive, as it merely opens the door for disorganization, duplicative effort or conflicting recommendations, and ultimately would require an inefficient use of FCC and NTIA resources to correct a consolidation plan created without the benefit of PSWAC's recommendations. Accordingly, IAFC/IMSA suggest the service consolidation provisions of the Order which affect the Public Safety radio services be stayed until such time as PSWAC completes its report and submits its findings to the FCC and NTIA.

III. Criteria to Establish a Request for Stay

The following requirements must be established in order to request a stay: 1) presence of irreparable harm; 2) absence of harm to other interested parties; 3) public interest considerations favoring a stay; and 4) the likelihood of success on the merits. Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). IMSA/IAFC's request involves no underlying litigation; therefore, there is no issue with respect to prevailing on the merits. This pleading addresses only the first three requirements needed to sustain a stay.

A. Implementation of the Consolidation Provisions of the Report and Order Would Cause Irreparable Harm.

The Public Safety Wireless Advisory Committee was established to advise the FCC and NTIA, in part, of opportunities for improved spectrum utilization, interoperability and efficiency. PSWAC's charter therefore logically charges it with addressing issues which are inextricably intertwined with the consolidation of the Public Safety radio services. As such, PSWAC will develop a recommendation for their consolidation in its report. The industry, and the FCC, will not have the requisite information needed from PSWAC's report by the November 20, 1995 deadline imposed under the Order for the submission of an industry consensus plan, nor by the proposed February, 1996 release date for the finalized consolidation plan.

A Stay will allow the Commission sufficient time to ensure that policies in the Public Safety radio service areas maximize interoperability, efficiency and enhancement of public safety telecommunications and minimize chances for interference with or mismanagement of these important services. Failure to allow PSWAC to do its job and provide crucial information which would determine the best way to consolidate existing stations could cause irreparable harm to new applicants as well as existing licensees.

B. A Stay of these Proceedings Will Not Harm Other Parties.

The Request for Stay will benefit, and not harm, other Public Safety Radio Service parties because the Commission's grant of this request will aid in the establishment of a fair and safe frequency coordination process, avoid the implementation of a consolidation plan which conflicts with the intent and direction of PSWAC's report, and avert the disruption of dismembering and reconstructing the finalized consolidation plan should that plan prove unworkable in light of PSWAC's recommendations. Users and coordinators of non-public safety radio services will not have those services subjected to the stay, and thus will remain unaffected. Consolidation of the existing Public Safety radio services must be accomplished with careful attention paid to the need for clear standards and criteria in the new consolidated service area(s). Additionally, all of the Public Safety radio services, as parties to the spectrum refarming proceeding, would benefit from the Stay because they would be able to understand clearly the needs of the Public Safety radio services prior to submitting comments on how those services should be consolidated, and how their respective services would fit into the paradigm.

C. Public Interest Considerations Favor a Stay.

It is in the public interest to grant the request for Stay. Because the public safety functions of the NTIA and FCC are already being taken into account by the PSWAC and because the FCC specifically has requested input from the Advisory Committee, it would be

counterproductive at this point to preempt, and effectively ignore, the PSWAC's forthcoming recommendations.

PSWAC's function, as established by its Charter filed on June 26, 1995, is to advise the FCC and NTIA on operational, technical, and spectrum requirements of federal, state and local Public Safety entities through the year 2010. This includes focusing on methods to develop and implement plans at NTIA regarding federal public safety policy, and to facilitate the FCC's negotiated rulemaking regarding the Public Safety spectrum. In this capacity, PSWAC will serve the public interest and advise the FCC and NTIA about opportunities for improved spectrum interoperability, utilization and efficiency.

The Committee's efforts then will be used to facilitate a negotiated rulemaking at the FCC regarding Public Safety spectrum. This function overlaps with the purpose behind the Commission's Order, to modify the policies governing the use of lower end spectrum. PSWAC, the FCC and NTIA further are linked because the FCC and NTIA provide necessary support to the Advisory Committee, and because FCC staff members serve on the Committee. Thus, it is in the public interest to use the PSWAC to its maximum potential, and not to risk conflicting directives from the PSWAC and the spectrum refarming proceeding concerning the consolidation of the Public Safety radio services.

The delay resulting from this request will be minimal. As heretofore noted, submissions to the Commission on service consolidation are due on November 20, 1995, and the Commission anticipates releasing an order on service consolidation in February, 1996. The PSWAC report is due by September 11, 1996, twelve months following the first PSWAC meeting. Therefore, a delay while awaiting the PSWAC report will be negligible in the context of the refarming proceeding objectives.

IV. Conclusion

IMSA/IAFC seek a stay of the service consolidation provisions contained in the Report and Order and Further Notice of Proposed Rulemaking in the spectrum refarming proceeding as they relate to the Public Safety radio services until such time as the Public Safety Wireless Advisory Committee performs its assigned task of examining Public Safety communications needs. Staying this aspect of the refarming proceeding until PSWAC has made its recommendations will avoid irreparable harm, will not injure interested parties, and will benefit the public interest.


WHEREFORE, THE PREMISES CONSIDERED, IAFC/IMSA respectfully request that the Commission stay the implementation of the service consolidation provisions of its Report and Order until the findings of the Public Safety Wireless Advisory Committee have been submitted and reviewed by the Commission and NTIA and presented to the public.

Respectfully submitted,

**INTERNATIONAL ASSOCIATION OF
FIRE CHIEFS**

**INTERNATIONAL MUNICIPAL SIGNAL
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